

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LUIS REY GONZALES, Defendant.	MEMORANDUM DECISION AND ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE Case No. 2:09-CR-800 TS
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This matter is before the Court on a Motion for Order to Show Cause. Defendant asks the Court to enter an order to show cause directed to the government to show cause why it should not be cited for contempt for failing to release property seized from Defendant during his arrest. For the reasons discussed below, the Court will deny the Motion.

I. BACKGROUND

On October 22, 2009, Defendant was indicted on a three-count Indictment. Defendant subsequently pleaded guilty to Count I on April 6, 2010. On June 21, 2010, Defendant was sentenced to eight months in the custody of the Bureau of Prisons. Defendant filed the instant Motion on December 14, 2010.

II. DISCUSSION

In his Motion, Defendant alleges that the government seized certain property from him, specifically: \$560.00 in United States currency. Defendant alleges that he had made a written formal demand for this property, but that the government has failed to release the property. As a result of the government's alleged failure, Defendant seeks an order to show cause.

The Court finds Defendant's Motion to be procedurally improper. If Defendant seeks a return of seized property, he may file a Motion under Federal Rule of Criminal Procedure 41(g).

Rule 41(g) states:

A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Defendant has not filed a Motion under Rule 41(g) and the Court is without a sufficient basis to rule on any such Motion. Without a Motion from Defendant and a subsequent order from the Court directing the government to return the property, there is no basis for the Court to issue an order to show cause based on the government's alleged failure to return property. Therefore, Defendant's Motion will be denied.

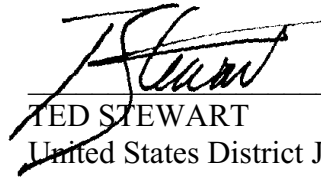
III. CONCLUSION

It is therefore

ORDERED that Defendant's Motion for Order to Show Cause (Docket No. 36) is DENIED.

DATED September 13, 2011.

BY THE COURT:



TED STEWART
United States District Judge